LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 20 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963
No. 141

PAUL JOHN CARBO,

Petitioner,

vs.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Brief Amicus Curiae of the American Civil Liberties Union of Southern California.

ROBERT W. KENNY,
1557 Beverly Boulevard,
Los Angeles 26, California,
Attorney for Amicus Curiae.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

	Page
Interest of Amicus Curiae	1
Argument	2
Conclusion	3

TABLE OF AUTHORITIES CITED

Cases

Todisco v. United States, No. 627, October Term 1961, cert. den. 368 U. S. 989	1, 2
American Dietaids Co., Inc. v. Celebrezze, No. 360	3
Clinton v. Virginia, No. 294	3
Gibson v. United States, No. 145	2
Lopez v. United States, 373 U. S. 427	2, 3
Palermo v. United States, No. 122	2
Sica v. United States, No. 134	2

Rules

Rules of the Superior Court, Rule 42(1)	1

Statute

United States Constitution, Fourth Amendment	1

IN THE

Supreme Court of the United States

October Term, 1963
No. 141

PAUL JOHN CARBO,

Petitioner,

vs.

UNITED STATES OF AMERICA.

Brief Amicus Curiae of the American Civil Liberties Union of Southern California.

This brief is being filed with the consent of the parties pursuant to Rule 42(1) of this Court. The letters of consent are being sent to the Clerk of this Court concurrently with the forwarding of this brief.

Interest of Amicus Curiae.

The American Civil Liberties Union of Southern California is a voluntary membership organization dedicated to the preservation and effectuation of the rights guaranteed by the Bill of Rights of the United States Constitution. It has previously before this Court, in an amicus curiae brief in *Todisco v. United States,* No. 627, October Term 1961, cert. den. 368 U. S. 989, urged that electronic eavesdropping, such as disclosed in the record of the instant case, violates the Fourth Amendment.[1] Hence this brief.

[1]Amicus is aware that there are other points raised in the petition for writ of certiorari herein as well as by the petitions in the

Argument.

In its brief in *Todisco v. United States,* No. 627, October Term 1961, cert. den. 368 U. S. 989, amicus said (p. 2): "Certiorari should be granted in order to afford this Court an opportunity to reconsider On Lee v. United States, 343 U. S. 747, to overrule it and establish as the law the principles urged by the dissenting opinions in that case and in Olmstead v. United States, 277 U. S. 438, or, at least, to limit the application of On Lee."

Amicus is of the same view today and again urges the Court to grant certiorari for the same purpose.

Since respondent in the *Todisco* case was the United States and was represented there and here by the Solicitor General, and since the attorneys for *amicus curiae* in *Todisco* are attorneys for petitioner here, we do not repeat the argument set forth in the brief in *Todisco,* but incorporate the same herein as though fully set forth and respectfully invite the Court's and counsel's attention thereto.

A word should be added, however.

As noted, this Court denied certiorari in *Todisco,* but it granted certiorari in, and decided, *Lopez v. United States,* 373 U. S. 427. *Lopez,* like *Todisco,* involved a factual situation in which the defendant knew that he was talking to a government agent.

---

companion cases (*Palermo v. United States,* No. 122; *Sica v. United States,* No. 134; *Gibson v. United States,* No. 145). Amicus is taking no position on the other questions raised in the cases, but confines itself to the electronic eavesdropping matters discussed in Point III, pp. 16-22 of the Petition and in the Supplement to the Petition in the instant case, points 1 and 2 (pp. 1-9) in the Petition in No. 122, Point III (p. 19) in the Petition in No. 134, and Point I, F (p. 28) in the Petition in No. 145.

As we read both the majority and concurring opinions in *Lopez*, this was a significant factor. In the instant case Daly did not know that Leonard was a government agent. This case, thus, is quite different, factually, from *Lopez* and furnishes basis for hearing by this Court. The presence of electronic eavesdropping is of ever-recurring importance and presents itself in a variety of factual settings. *Cf. American Dietaids Co., Inc. v. Celebrezze*, pending before this Court, No. 360, this Term, and *Clinton v. Virginia*, No. 294, this term.

Conclusion.

The Petition for writ of certiorari should be granted.

Respectfully submitted,

ROBERT W. KENNY,
Attorney for Amicus Curiae.